



December 5, 2001

Ms. Stephanie K. Stephens
Assistant Criminal District Attorney
County of Waller
836 Austin, Suite 105
Hempstead, Texas 77445

OR2001-5653

Dear Ms. Stephens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155693.

The Westside Narcotics Task Force (the "task force") received a request for "every single document related to" the arrest and incarceration of the requestor's client on June 5, 2001. You inform us that Exhibit A-1, the "first page" of the offense report, Exhibit C, an arrest warrant for the named individual, Exhibit D, the criminal complaint against the named individual, and Exhibit F, a copy of the named individual's drivers license, have been released to the requestor.¹ You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103,² and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution

¹We note that section 552.130 of the Government Code makes confidential information relating to an individual's drivers license. However, we also note that section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest.

²Although you do not specifically refer to section 552.103, you assert that the request was made in anticipation of litigation, and that it is the position of the task force that "this request was made in order to circumvent discovery procedures . . ." We therefore assume that you are arguing that the information is also excepted under section 552.103.

of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information contained in submitted Exhibits A-2 through A-6, B-1 and B-2, E, H, and I-1 through I-6, relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the information in Exhibits A-2 through A-6, B-1 and B-2, E, and I-1 through I-6, would interfere with the detection, investigation, or prosecution of crime, and therefore, it is excepted under section 552.108(a)(1). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report.³

We also note that the information in exhibit H is subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

Sections 552.103 and 552.108 are discretionary exceptions and are not “other law” for purposes of section 552.022(a)(3). *See* Open Records Decision Nos. 542 (1990) (“litigation exception” does not implicate third party rights and therefore is waivable by a governmental

³Front page offense report information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code.

body), 177 (1977) ("law-enforcement exception" waivable by governmental body). Therefore, the information in Exhibit H, which you describe as an "Investigator Expense Form," must be released under section 552.022(a)(3).

We will next address your argument for the criminal history information in Exhibit G-1 through G-12. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information in Exhibits G-1 through G-12 is CHRI generated by TCIC and NCIC. Accordingly, the information is excepted from required public disclosure by section 552.101 of the Government Code.

To summarize, the task force must release the information in Exhibit H pursuant to section 552.022(a)(3). The information in Exhibits A-2 through A-6, B-1 and B-2, E, and I-1 through I-6, may be withheld under section 552.108(a)(1), with the exception of basic information. The information in Exhibits G-1 through G-12 is CHRI generated by TCIC and NCIC and is therefore excepted from required public disclosure by section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/sdk

Ref: ID# 155693

Enc. Submitted documents

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